

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 628

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO OCCUPATIONAL HEALTH AND SAFETY; CLARIFYING RIGHT OF
ENTRY AND INSPECTION; CLARIFYING PRIVATE QUESTIONING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 50-9-10 NMSA 1978 (being Laws 1972,
Chapter 63, Section 9, as amended) is amended to read:

"50-9-10. RIGHT OF ENTRY AND INSPECTION--COMPLAINTS--
CONSULTATION--NOTIFICATION.--

A. In order to carry out the purposes of the
Occupational Health and Safety Act, the department's authorized
representatives, upon presenting appropriate credentials to the
owner, operator or agent in charge, are authorized to and may:

(1) enter and inspect and investigate at
reasonable times and without delay any place of employment [~~at~~
~~reasonable times and without delay~~] and all pertinent

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underscored material = new
[bracketed material] = delete

1 conditions, structures, machines, apparatus, devices, equipment
2 and materials therein; and

3 (2) question privately the employer and
4 employees [~~and to inspect and investigate~~] during regular
5 working hours and at other reasonable times and within
6 reasonable limits and in a reasonable manner [~~the place of~~
7 ~~employment and all pertinent conditions, structures, machines,~~
8 ~~apparatus, devices, equipment and materials therein. The~~
9 ~~department's representative is not authorized to question~~
10 ~~privately the employer or employees until the board has adopted~~
11 ~~regulations protecting the rights of such employer and~~
12 ~~employees]. Legal counsel for the employer or employee being
13 questioned may be present during private questioning, provided
14 that the same legal counsel does not represent both the
15 employer and employee. For purposes of this section,
16 "employer" includes persons employed as a manager, supervisor
17 or foreman and persons acting as an agent of the employer
18 directly or indirectly in the interest of the employer in
19 relation to an employee. An employee being privately
20 questioned may elect to have a representative of the employee's
21 recognized or certified bargaining unit present during the
22 employee's private questioning.~~

23 B. Any employee or representative of employees may
24 file a written complaint with the department concerning any
25 alleged violation of a regulation or any hazardous condition.

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1 A copy of the complaint shall be provided to the employer at
2 the time of the inspection. However, upon the request of the
3 complainant, the complainant's name shall not appear on the
4 copy. The department shall investigate the complaint and
5 notify the complainant and employer in writing of the results
6 of the investigation and any action to be taken. If no action
7 is contemplated, the department shall notify the complainant
8 and include in the notice the reasons therefor. The department
9 shall provide for the informal review of decisions not to take
10 compliance action at the request of the complainant. The
11 review shall not be by those who investigated the complaint.

12 C. In order to aid inspections, a representative of
13 the employer and a representative authorized by employees shall
14 be given an opportunity to accompany the department inspector
15 during the physical inspection of the work place. If there is
16 no authorized employee representative, the department inspector
17 shall consult with a reasonable number of employees.

18 D. Prior to or during any inspection of a work
19 place, any employees or representative of employees employed in
20 [~~such~~] the work place may notify the department or the
21 department inspector in writing of any violation of the
22 Occupational Health and Safety Act [~~which~~] that they have
23 reason to believe exists in [~~such~~] the work place. The
24 department shall establish procedures for informal review of
25 the decision made by the inspector, and, if no citation is

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1 issued with respect to the alleged violation, it shall furnish
2 the employee requesting [~~such~~] the review a written statement
3 of the reasons for the department's final disposition of the
4 case.

5 E. If an inspection reveals that employees are
6 exposed to toxic materials or harmful physical agents at levels
7 in excess of those prescribed by regulations of the board, the
8 department shall provide the employees with access to the
9 results of the inspection. The employer shall promptly notify
10 the employees who are being exposed to the agents or materials
11 in excess of the applicable regulations and inform them of the
12 corrective action being taken or that review has been requested
13 in accordance with Section 50-9-17 NMSA 1978.

14 F. It is unlawful for any person to give advance
15 notice of any inspection to be conducted under the Occupational
16 Health and Safety Act without the written approval of the
17 secretary or the secretary's authorized representative.

18 G. The board shall adopt regulations to implement
19 this section."